

PUBLIC HEARING

October 7, 2015

At 8:20 p.m. Supervisor Schiliro stated that the Public Hearing, which was adjourned on September 24, 2015, would reconvene in accordance with the Public Notice that follows:

NOTICE IS HEREBY GIVEN THAT the North Castle Town Board will hold a Public Hearing on September 9, 2015, at 7:30 PM, or as soon thereafter, at Town Hall, 15 Bedford Road, Armonk, NY, 10504, for the purpose of considering a local law to amend Chapter 213, Zoning, of the Code of the Town of North Castle, including: Amendments to Section 213-14G(1) relating to the height of a necessary retaining wall; Section 213-22 to include a modification to the front yard setback in the RB Roadside Business Zoning District; and to create a new Section 213.35.2 to establish standards for Site Development Plans.

The proposed local law is available in the Town Clerk's office during regular business hours and on the Town website www.northcastleny.com. ALL PERSONS HAVING AN INTEREST IN THE MATTER ARE INVITED TO ATTEND AND BE HEARD.

By Order of the Town Board
Anne Curran, Town Clerk

Dated: August 28, 2015
Armonk, NY

The following correspondence was received since the public hearing was reconvened on September 24, 2015:

Letter from John Junker dated September 28, 2015.

Letter from Donald Ahrenberg with four additional supporting signatures received October 7, 2015.

Town Attorney Roland Baroni said a point of clarification was needed as a result of the most recent session of the public hearing held on September 24, 2015 during which Michael Sirignano (attorney for Kenneth and Cynthia Kauffman) noted that the matter being discussed was the prohibition of walls in excess of six feet in a setback. Mr. Baroni said that although the Zoning Board of Appeals (ZBA) made no reference to this during their discussion or in their resolution, within the context of what the ZBA interpreted in reference to a wall, included a necessary retaining wall, and referred to walls in excess of six feet in a setback which would require a variance from the ZBA. He said, therefore, that Mr. Sirignano's reference was accurate. Mr. Baroni said that under the current Code if any wall is in excess of six feet and in the setback in a given zoning district it would require a variance from the ZBA, however if a wall was in the interior of the property, it could be approved by the Residential Project Review Committee (RPRC) and the height would not be of concern. He said the change to the Code proposed by the Planning Board is that the height and yard requirements would not prohibit any necessary retaining wall, and therefore the setback requirements would not apply. However, if a wall would be in excess of six feet anywhere on the property in any zoning district, it would require Planning Board site plan approval.

In response to a query from Councilman DiGiacinto, Mr. Baroni said he did not think the draft language regarding the requirement for Town Board special use permit for a retaining wall in excess of six feet the R-5, R-10, and R-2F Zoning Districts would be considered.

In response to queries from Councilman D'Angelo, Director of Planning Adam Kaufman confirmed that, until a few months ago, retaining walls were approved by the Building Department. Mr. Kaufman added that the ZBA said that was incorrect; and he confirmed the proposed change to the Code would bring the law back to how it was interpreted before the ZBA ruling. Mr. Kaufman said a Planning Board review of a retaining wall includes aesthetics, where it is located and impact on the neighborhood. In regard to Mr. D'Angelo's query, Mr. Kaufman said it this review would not necessarily be done as part of a public hearing. If the review is conducted by the RPRC, it may or may not be reviewed at the Planning Board meeting. A commercial application would be subject to a Planning Board review and a public hearing. Mr. Kaufman said that under the proposed change a retaining wall in excess of six feet would require Planning Board review and either a public hearing or neighbor notification would be required to

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advise that the item was on the Planning Board agenda. In response to a query from Councilman DiGiacinto, Mr. Kaufman confirmed that, under the proposed change, a retaining wall in excess of six feet would never go before the RPRC.

In response to a query from Supervisor Schiliro, Mr. Kaufman said the professional input would be similar for the review process by either the Planning Board or the ZBA. If retaining walls in excess of six feet are permitted, the application would have to be reviewed by the Planning Board to ensure it meets technical aspects including appropriate screening, location which is reasonable and in conformity with the neighborhood, designed correctly and storm water is addressed. If the application meets the checklist criteria, the Planning Board will issue the permit to construct the wall. If the Town Code says that walls in excess of six feet are prohibited, that is a hard limit and the applicant can ask for relief from the requirement in a variance application, but would need to meet all the criteria to obtain a variance including demonstrating that it is not feasible to build a wall less than six feet.

In response to a query from Councilman D'Angelo, Mr. Baroni said that the recourse to an objection to the approval of a wall by either the Planning Board or the ZBA would be an Article 78 proceeding.

Mr. Baroni said under the existing statute as interpreted by the ZBA the only walls that are subject to the variance procedure are those walls in excess of six feet in the setback. He said under the Planning Board's proposal, any retaining wall over six feet, no matter where it is on the property, would have the benefit of Planning Board approval; while currently, a retaining wall which is not within the setback, in the interior of the property, would most likely be subject to RPRC review.

In response to a query from Councilman DiGiacinto as to how many retaining walls have been constructed in the setbacks, Mr. Kaufman said that the Town had not interpreted the Code the way the ZBA did, and those walls did not require a variance as the Town recently learned of that interpretation.

Councilman DiGiacinto displayed photos of numerous retaining walls in over six feet in both Armonk and North White Plains and said the Planning Board has been approving retaining walls in excess of six feet in height over the years. Ms. DiGiacinto noted favorably that applications before the Planning Board are an agenda item; and said she urges North White Plains to sign up to receive Town Board and Planning Board agendas. She said the Planning Board Chair and members reiterate at their meetings that they like to see neighbors attend meetings and give their input; and she said they do listen to their comments. She noted that in speaking with the Building Inspector in Scarsdale she was advised that any retaining wall over 24 inches in any zoning district goes before the Architectural Review Board, and once approved by ARB, it is filed with the Building Department and town engineer and a storm water management plan is required. In Scarsdale, if a retaining wall is close to a property line an as built survey is required; there are no requirements for special use permit, ZBA or Planning Board site approvals. Councilman DiGiacinto said the Planning Board has the background necessary to review any retaining wall. She said that if an application meets all the standards, with the exception of a retaining wall over six feet, that to have an applicant go to the ZBA, and receive a ruling against the variance, thereby preventing the applicant from going forward, other than filing an Article 78 proceeding, would be not be fair. With regard to proposed Section 213-33 V, Ms. DiGiacinto said she would like to have the twelve standards used for all retaining walls, not only those over six feet.

Councilman Mezzanello said based on his experience on the Planning Board, he thought this Board is better equipped to read and comment on drawings, adding that walls over four feet require a stamped drawing from a structural engineer. In response to a query from Councilman Mezzanello, Mr. Baroni said that certain standards must be met for the ZBA to grant a variance, while the Planning Board can work with an application and produce what is deemed an acceptable result. The Planning Board has engineers present at meetings to work with the applicant. This does not occur with the ZBA where an application either meets or fails the standards. The ZBA rules in that manner, in a semi-judicial role, while the Planning Board has greater latitude.

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Councilman D'Angelo said the Planning Board can work with an applicant and make the project work with the input of the engineer and the public. Councilman Reiter and Supervisor Schiliro expressed support of review of retaining walls in excess of six feet by the Planning Board.

In response to a query from Susan Shimer, Mr. Baroni said that the Planning Board recommended that retaining walls in all zoning districts regardless of acreage be reviewed by the Planning Board to address safety issues and other criteria in which the Planning Board has expertise. Mr. Kaufman confirmed that currently any wall over four feet is engineered; and the RPRC has the ability to refer any application for a wall to the Planning Board.

Ed Lobermann expressed support of Planning Board review of all retaining walls over six feet both in and outside of the setback, but said that Planning Board review of retaining walls under six feet should not be required.

Michael Sirignano said the twelve standards proposed for review of retaining walls were at the forefront among other towns. Mr. Sirignano recommended that the height of the wall not be left to the Planning Board; and urged the Town Board not to discount the role of the ZBA. He said the six foot limit was generous as compared to other towns due to the impact on neighbors; and there is nothing onerous for an applicant to go before the Planning Board, and then to the ZBA to make the case for a wall over six feet. Mr. Sirignano said that probably many of the Town's existing retaining walls in excess of six feet were not reviewed.

Following discussion among with Board, it was agreed that the twelve standards in Section 213-33 V. would be required only for retaining walls in excess of six feet in height. With regard to Section 213-14.G it was agreed that that the current language pertaining to any fence or wall (not including a retaining wall), is meant to include a wall anywhere on the property. Further agreed was to delete the word 'necessary' prior to 'retaining wall' in Sections 213-14G and 213-33; to add the words 'if determined necessary' in Section 213-33 V.(6) following 'A landscaping plan'; and to revise Town Board to Planning Board in Section 213-33 V.(8).

After all persons were heard who desired to be heard, Councilman D'Angelo moved, seconded by Councilman DiGiacinto, that the Public Hearing be closed at 9:25 p.m.

The roll call vote was as follows:

Ayes: Councilmen D'Angelo, DiGiacinto, Reiter, Mezzancello, Supervisor Schiliro

Noes: None

Councilman D'Angelo moved, seconded by Councilman DiGiacinto, that based upon review of the Environmental Assessment Form and all other materials, it has been determined that there will be no significant adverse environmental impact and the Town Board hereby adopts a Negative Declaration.

The roll call vote was as follows:

Ayes: Councilmen D'Angelo, DiGiacinto, Reiter, Mezzancello, Supervisor Schiliro

Noes: None

Councilman D'Angelo moved, seconded by Councilman DiGiacinto, the adoption of Local Law 8 of 2015, as amended, to amend Chapter 213, Zoning, of the Code of the Town of North Castle, including: Amendments to Section 213-14G(1) relating to the height of a necessary retaining wall; Section 213-22 to include a modification to the front yard setback in the RB Roadside Business Zoning District; and to create a new Section 213.35.2 to establish standards for Site Development Plans..

The roll call vote was as follows:

Ayes: Councilmen D'Angelo, DiGiacinto, Reiter, Mezzancello, Supervisor Schiliro

Noes: None

The Local Law follows at the end of these minutes.

Anne Curran, Town Clerk

Dated: October 19, 2015

TOWN OF NORTH CASTLE

**Local Law No. 8 of the year 2015
(Adopted October 7, 2015)**

A local law to amend Chapter 213, Zoning, of the Code of the Town of North Castle as follows:

1. Section 213-2 is amended to change "Planning Board" to "Town Board" in relation to the Town Plan as follows:

Except where specifically defined herein, words used in this chapter shall carry their customary meanings. All words used in the present tense include the future tense; all words in the singular number include the plural number and vice versa, unless the natural construction of the wording indicates otherwise; the word "person" includes corporations and all other legal entities; the words "lot," "plot" and "tract of land" shall each include the others; the word "premises" shall include land and buildings thereon; the word "building" shall include "structure" and vice versa; and "occupied" or "used" shall be considered as though followed by the words "or intended, arranged or designed to be used or occupied," unless the natural construction of the wording indicates otherwise. The word "shall" is mandatory. Unless otherwise specified, all distances shall be measured horizontally. The word "Town" means the Town of North Castle; the term "Town Board" means the Town Board of said Town; the term "Board of Appeals" means the Zoning Board of Appeals of said Town; the term "Planning Board" means the Town Planning Board of said Town; the term "Building Inspector" means the Building Inspector of said Town; and the term "Town Plan" means the plan adopted by the Town Board pursuant to § 272-a of the Town Law. The words "this ordinance" shall mean the Zoning Ordinance as originally adopted on May 1, 1941, and as amended from time to time.

2. The following definitions in § 213-3 are amended to read as follows:

ARTISAN'S WORKSHOP -- An establishment for the preparation, display, and sale of individually crafted artwork, jewelry, furniture, cabinetry, sculpture, pottery, leathercraft, hand-woven articles, and related items as well as small group instruction related to the creation of artwork, jewelry, furniture, cabinetry, sculpture, pottery, leathercraft, hand-woven articles, and related items.

CABANA — An accessory building or structure that is used for a swimming pool or some similar recreational use and not intended for human habitation.

HOME OCCUPATION, CUSTOMARY — Any use customarily conducted entirely within a dwelling and carried on only by the residents thereof, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes, does not change the character thereof, does not have any exterior evidence of such secondary use other than a permitted name plate and does not involve merchandising, trade or the exchanging of commodities by sale. The conducting of a clinic, hospital, barbershop, beauty parlor, photographer or artist salon, real estate and/or insurance office, tea room, tourist home, animal hospital or any similar use shall not be deemed to be a home occupation. Any business enterprise or activity which shall require a license or permit from the Town or from any bureau or department of the county or state shall be deemed not to be a home occupation.

HOSPITAL — An institution providing health services for human in patient or medical or surgical care for the sick or injured, and including related facilities such as laboratories, outpatient departments, training facilities, central service facilities, and staff offices which are integral parts of the facility. The term shall not be deemed to include a nursing, rest or convalescent home, medical clinic, or home for the aged.

RESTAURANT, FAST-FOOD — A restaurant devoted to the preparation and offering for sale of food and beverages to the public for consumption either on or off

the premises and which is required by contractual or other arrangements to offer any of the following: standardized menus, logos, ingredients, food preparation, decor, uniforms, or similar standardized features, where the floor area available for dining is less than 1/2 of the gross floor area and a major portion of the sales to the public is at a drive-in or stand-up-type counter. The term "fast-food restaurant" shall not include bakeries, delicatessens or similar types of retail establishments. (See also "cafeteria," "cabaret," "ice cream and frozen custard stand," "restaurant, carry-out," and "restaurant.")

3. The following definitions are added to § 213-3:

WALL - Any visible or tangible obstruction to sight or passage of humans or animals, excluding vegetation, interposed between two portions of land or which divides a piece of land into distinct portions.

WALL, RETAINING – A structure built or designed to retain or restrain lateral forces of soil or other materials, said materials being similar in height to the height of the wall.

4. Section 213-13G is amended to read as follows:

- G. Required street frontage. No building permit shall be issued for any structure unless the lot upon which that structure is to be built has at least the amount of frontage required in the district in which the lot is located on a street which has been suitably improved to Town road or private road standards, or a bond posted therefor, all in accordance with the provisions of § 280-a of the Town Law.

5. Section 213-14B is amended to change “allowable gross floor area” to “gross floor area” as follows:

- B. Porches, carports and garages. No porch may project into any required yard. Any two-story or enclosed porch or garage, or one having a roof and capable of being enclosed, shall be considered a part of the building in determining the yard requirements, the amount of lot or building coverage and/or, except for garages, the gross floor area.

6. Section 213-14C is amended to add “steps” and to read as follows:

- C. Projecting horizontal features. Features, such as window sills, steps, belt courses, chimneys, cornices, eaves or bay windows, may project up to three feet into any required yard, but not nearer than eight feet to the lot line in any case, provided that the area of such features on any wall shall not exceed 1/4 the area of said wall.

7. Section 213-14G(1) and (6) are amended to read as follows:

- G. Walls and fences.

- (1) The yard and height requirements of this chapter shall not be deemed to prohibit any retaining wall. However, any retaining wall over six feet in height shall require approval of the Planning Board. This chapter shall not prohibit any fence or wall, subject to applicable permits and reviews by the Town, provided that the finished side of such fencing or wall shall face the exterior of the property as defined by the property line, and provided that such fence or wall does not exceed six feet in height. Mesh deer fencing exceeding six feet in height and driveway entry piers and gates exceeding six feet in height shall be permitted to reach a height of eight feet, except that deer fencing over six feet in height shall not be permitted within 25 feet of the front property line.

- (a) Retaining Walls. Retaining walls in excess of six feet in height shall be subject to the following requirements, notwithstanding any other provisions of this chapter:
 - (1) Purpose. The intent of these regulations is to regulate retaining walls in excess of six feet in height so that any walls in excess of six feet in height are aesthetically pleasing, are compatible with the surrounding residential character, are not detrimental to public health, safety, or general welfare and do not impair the utility or value of property of other persons located in the vicinity of the site.
 - (2) Demonstration, to the satisfaction of the Town Engineer, ensuring stability against overturning, sliding, lateral soil loads, water uplift, and acceptable soil resistance at the base of the retaining wall.
 - (3) Depiction of setback dimensions from all property lines and existing structures to all proposed retaining wall(s).
 - (4) Depiction of existing and proposed contour elevation lines in two foot increments.
 - (5) Submission of an erosion and sediment control plan to the satisfaction of the Town Engineer.
 - (6) A landscaping plan, which, at a minimum, shall include all proposed ground cover, plants, shrubs, trees, and all fences including location and setbacks from property lines.
 - (7) No retaining wall shall obstruct visibility at any intersection.
 - (8) No retaining wall in excess of six feet shall be placed in a location where the wall would create an unacceptably negative visual impact upon an adjacent property and where it cannot be suitably screened to the satisfaction of the Planning Board.
 - (9) All retaining walls shall be designed so as not to modify or alter existing drainage patterns.
 - (10) Excavation needed for the placement, location and design of a retaining wall shall not undermine the grade of the adjacent property.
 - (11) Retaining walls shall be constructed with materials and designs which reflect the character of the immediate neighborhood.
 - (12) A guardrail for protection from fall from the top of retaining walls may be required. If required, such guardrail shall be constructed with materials and designs which reflect the character of the immediate neighborhood and shall be designed in accordance with all applicable building codes.
 - (6) A building permit shall be required for all fences. Additionally, site plan approval shall be required for any fence in any nonresidential district or accessory to any nonresidential use.
8. Section 213-14G(7), regarding applications for fences in nonresidential districts or accessory to nonresidential uses, is repealed.
 9. Section 213-14N is amended to change “shading” to “shielding” as follows:
 - N. Exterior lighting. All exterior lighting accessory to a multifamily or nonresidential use, and all lighting of recreational facilities accessory to a residential use, including the lighting of signs, shall be of such type and location

and shall have such shielding as will prevent the source of the light from being seen from any adjacent residential property. Hours of lighting may be limited by the Planning Board in acting on any site development plan. Where site development plan approval is not required, the Building Inspector shall refer the building permit application to the Town Engineer, who may limit the hours of lighting as a condition of building permit approval.

10. Section 213-23C, additional business district regulations for the Central Business B (CB-B) District, is amended to read as follows:

- (a) No fabrication or manufacturing shall be permitted, except that which is incident to and on the same premises as an Artisan's Workshop associated with a permitted retail use, and further provided that such fabrication or manufacturing shall not occupy more than 75% of the gross floor area of the use nor use motor power other than electric.

11. New § 213-35.2 is added as follows:

§ 213-35.2. Standards.

The Planning Board shall not approve a duly submitted site plan unless it shall find that such plan conforms to the requirements of this chapter. In reviewing the site plan, the Planning Board shall also take into consideration the public health, safety and general welfare and shall set appropriate conditions and safeguards which are in harmony with the general purpose and intent of these regulations, including, without limitation, in regard to achieving the following:

- A. An adequate, convenient and safe vehicular and pedestrian circulation system, so that traffic generated by the development will be properly handled both within the site and in relation to the adjoining street system.
- B. A site layout that will have the minimum adverse effect upon the established character or potential use of any adjoining properties.
- C. The reasonable screening at all seasons of the year from the view of adjacent residential properties and streets of all parking and loading areas or other features that, in the opinion of the Planning Board, require such screening.
- D. A drainage system designed to the satisfaction of the Town Engineer and meeting the requirements of Chapter 173, Stormwater Management, of the Town Code.
- E. The underground installation of all utilities and services, including lines and equipment, for providing power and/or communication, in order to achieve greater safety and improved appearance.
- F. Conformance of the final site development with the Town Comprehensive Plan.
- G. Consideration of the project's impact on the natural and man-made environment, with emphasis on minimizing the adverse effects thereon.
- H. A plan which takes advantage of solar access.
- I. The site plan shall be designed so that the created landscape is harmonious with the natural features of the site.
- J. The relationships of improved areas and open spaces are designed to be harmonious with existing structures, terrain and landscape.
- K. Reasonable provisions are made for sight and sound buffers, the preservation of views, light and air, and those aspects of structure, improvement and land design not otherwise regulated that may have substantial effects on neighboring land uses.
- L. New designs of structures, improvements and land are consistent and harmonious in relationship to existing streetscapes and the predominant

architecture of the area.

M. All outdoor lighting shall meet the following standards:

- (1) No use shall produce illumination beyond the boundaries of the property on which it is located in excess of 0.5 footcandle, measured vertically at five feet above the ground, at the property line. Notwithstanding the above, where two commercial properties abut each other, a maximum vertical illumination at five feet above the ground, at the property line, of 1.0 footcandle is permitted.
- (2) All lighting shall be building- or pole-mounted, shielded floodlights and/or shielded spotlights and shall be down-lit or adequately shielded so as not to create glare.
- (3) All exterior luminaires, including luminaires installed under canopies, shall be full cutoff fixtures.
- (4) The mounting height for any lighting fixture shall not be greater than 25 feet.
- (5) The Planning Board may require operable photocells, motion sensors, or timers that allow a light to go on at dusk and off by an appropriate evening hour, as well as shields to alleviate nuisance and disability glare.
- (6) The Planning Board may require reflector markers, lines, signs or other passive means for illumination be used in order to avoid excessive or unnecessary light.
- (7) The Planning Board may require parking area lights to be greater in number, lower in pole height and lower in light level, as opposed to fewer in number, higher in pole height and higher in light level, in order to avoid excessive or unnecessary light.

12. The Schedule of Business District Regulations for the RB Roadside Business District is amended to change the minimum front yard setback from 75 feet to 10 feet.

District	A use marked with an asterisk (*) is subject to conformance to additional standards as set forth in Article VII. Nonresidential and multifamily uses are subject to site plan approval and performance standards in accordance with Articles VIII and X. Standards shown are minimum requirements, unless otherwise noted. Any use not specifically listed shall be deemed to be prohibited. Dimensions are in feet, unless otherwise noted.		Minimum Lot Size			Minimum Yards (b, c)			Maximum Building Coverage Lot Area (percent)	Maximum Building Height (f)		Floor Area Ratio	Other Standards and Requirements
	Permitted Principal Uses	Permitted Accessory Uses Only in Conjunction With a Permitted Principal Use	Area	Frontage (feet) (a)	Depth (feet) (b)	Front (feet) (c)	Side (feet) (d, e)	Rear (feet) (f)		Stories	Feet		
1	2	3	4	5	6	7	8	9	10	11	12	13	14
RB Roadside Business	1. Any uses permitted in a CB District, as permitted therein. *2. Recreation centers.	1. Accessory uses as permitted in an SC District. *2. Sale, distribution and storage of liquefied petroleum gas. 3. Residences.	30,000 square feet	100	300	10 (k)	0 (h)	50 (k)	25%	2	24	0.3	As in § 355-29E